



4. Defendant Capital One Bank (USA) N.A. (“Capital One”), is a Virginia business entity with an address of 1680 Capital One Drive, McLean, Virginia 22102-3491, and is a “person” as defined by 47 U.S.C. § 153(39).

### **FACTS**

5. In 2018, Capital One began calling Plaintiff’s cellular telephone, number 248-xxx-1124, using an automatic telephone dialing system (“ATDS”) and/or using an artificial or prerecorded voice.

6. Capital One left prerecorded voicemail messages for Plaintiff.

7. On or about January 7, 2018, Plaintiff spoke with a live representative and requested that all calls to her cease.

8. Nevertheless, Capital One continued to place automated calls to Plaintiff’s cellular telephone number.

### **COUNT I** **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –** **47 U.S.C. § 227, et seq.**

9. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

10. At all times mentioned herein, Defendant called Plaintiff’s cellular telephone number using an ATDS or predictive dialer and/or using a prerecorded or artificial voice.

11. Defendant continued to place automated calls to Plaintiff's cellular telephone number despite knowing that it lacked consent to do so. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

12. Plaintiff was annoyed, harassed and inconvenienced by Defendant's continued calls.

13. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

14. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

15. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: July 5, 2018

Respectfully submitted,

By: /s/ Sergei Lemberg, Esq.  
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